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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/879,314	06/12/2001	Mark A. Dovi	10005097-1	5150

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EXAMINER

WU, QING YUAN

ART UNIT	PAPER NUMBER
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2126

DATE MAILED: 02/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/879,314

Applicant(s)

DOVI, MARK A.

Examiner

Qing-Yuan Wu

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 October 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8, 13 and 15-33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8, 13 and 15-33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Claims 1-8, 13, 15-33 are presented for examination.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1-8, 13, 15-16, 18, 21, 24, 27, and 32 are rejected under 35 U.S.C. 102(e) as being anticipated by Scott et al (hereafter Scott) (U.S. Patent 6,816,464).

4. As to claim 1, Scott teaches the invention as claimed including a method for transferring data between processing applications:

measuring a first data transfer metric for a first data transfer pathway between said first process and said second process; measuring said first data transfer metric for a second data transfer pathway between said first process and said second process [abstract, lines 1-4; col. 2, lines 10-15, 32-36, and 46-53; col. 4, lines 42-45; 406, 408, Fig. 4; Fig. 5]

comparing the first data transfer metric for the first pathway to the first data transfer metric for the second pathway; and selecting one of said first and second data transfer pathways for subsequent data transfers based upon the result of said step of comparing, and upon at least

one user-specified data transfer rule [abstract, lines 4-9; col. 2, lines 17-22, 36-39; col. 2, line 64-
col. 3, line 3; col. 5, lines 3-5; col. 5, line 56-col. 6, line 22; col. 8, lines 40-49; 410, 412, Fig. 4].

5. As to claim 2, Scott teaches the invention as claimed including at least one of first and second data transfer pathways are comprised of at least one computer program [abstract, route checking and management program].

6. As to claim 3, Scott teaches the invention as claimed including at least one of first and second data transfer pathways is a physical transmission media [102, 202, 302, Figs. 1-3].

7. As to claim 4, Scott teaches the invention as claimed including a data transmission pathway cost [abstract, lines 6-9].

8. As to claim 18, Scott teaches the invention as claimed including wherein said first data transfer metric relates to error rates [col. 3, lines 12-15; col. 3, line 67-col. 4, line 3; col. 9, table 2].

9. As to claim 21, Scott teaches the invention as claimed including said at least one user-specified data transfer rule comprises at least one of selecting the least expensive pathway [col. 8, lines 10-22].

10. As to claims 5-8, 24, and 27, these are method for transferring data between processors claims that corresponds to the method claims 1-4, 18, and 21. Therefore, they are rejected for the same reason as claims 1-4, 18, and 21 above.

11. As to claim 13, this claim is rejected for the same reason as claim 1 above. In addition, Scott teaches the invention as claimed including a computer system that minimizes data transfer operations, comprising:

a data network having a plurality of data transfer pathways through which data is transferred [col. 2, lines 32-33];

at least first and second processors coupled to said network [102, 104, 106, 108, Fig. 1];

a data transfer manager coupled to the first and second processors and coupled to the data network [col. 2, lines 28-31; col. 5, lines 56-63; Fig. 3].

12. As to claims 15-16, Scott teaches the invention as claimed including wherein said data transfer manager is a computer and/or a computer program [col. 7, lines 7-9].

13. As to claim 32, this is a system claim that corresponds to method claim 21. Therefore, it is rejected for the same reason as method claim 21 above.

Claim Rejections - 35 USC § 103

14. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

15. Claims 17, 19-20, 22-23, 25-26, 28-31, and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Scott.

16. As to claim 17, Scott does not specifically teach wherein said first and second processes and said first and second data transfer pathways are comprised by a single computer. However, Scott disclosed that his invention could be implement in alternative embodiments [col. 4, lines 62-65]. It would have been obvious to one of an ordinary skill in the art at the time the invention was made, to have recognized that the teaching of Scott could be implemented in a single computer or communication between various entities.

17. As to claims 19-20, Scott does not specifically teach said first data transfer metric relates to processing overhead, and wherein said processing overhead results from at least one of encryption and compression. However, Scott disclosed quality score, packet loss, average delay, and average jitter [col. 3, lines 12-15; col. 3, line 67-col. 4, line 3; col. 9, table 2]. It would have been obvious to one of an ordinary skill in the art at the time the invention was made, to have recognized that the teaching of Scott takes into consideration processing overheads, which cause delays, into the selection of a pathway.

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18. As per claim 22, Scott does not specifically teach selecting the least expensive pathway for very large data transfers and the fastest pathway for sensitive data transfers. However, Scott disclosed providing individual or group routing preferences and/or other route information so that the system can select the proper route for the individual or group [col. 2, lines 17-22]. It would have been obvious to one of an ordinary skill in the art at the time the invention was made, to have recognized that the teaching of Scott could include selecting what the user preferred, such as the limitations mentioned above.

19. As to claims 23, 25-26, and 28, these are method for transferring data between processors claims that corresponds to the method claims 17, 19-20, and 22. Therefore, they are rejected for the same reason as claims 17, 19-20, and 22 above.

20. As to claim 29, this claim is reject for the same reason as claim 17 above.

21. As to claims 30, 31 and 33, these are system claims that correspond to method claims 19-20, and 22. Therefore, they are rejected for the same reason as method claims 19-20, and 22 above.

22. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Qing-Yuan Wu whose telephone number is (571) 272-3776. The examiner can normally be reached on 8:30am-5:00pm.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Meng-Ai An can be reached on (571) 272-3756. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Qing-Yuan Wu

Examiner

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